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STATE HOUSE ANNEX

25 CAPITOL STREET

CONCORD, NEW HAMPSHIRE 03301-6397

May 15, 1984

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The Honorable Robert W. Flanders  
Treasurer of the State of New Hampshire  
State House Annex  
Concord, New Hampshire 03301

Re: Custody of Benjamin Thompson Trust Fund

Dear Mr. Flanders:

You have asked for our opinion as to whether you may delegate the custody granted to you by statute over the Benjamin Thompson Trust Fund to a bank trust department as your agent in order to increase the efficiency of transactions in the fund. It is our opinion that, although you may not actually delegate legal custody of the fund to another party, the type of arrangement you have suggested is nevertheless permissible as an administrative mechanism to facilitate your operations rather than an impermissible delegation of legal custody.

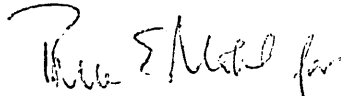
All state trust funds, including the Benjamin Thompson Trust Fund, are placed by statute in the custody of the state treasurer. RSA 11:1 and 6. State trust funds generally are required to be kept separate and are administered by a board of trustees having control of the activities to be benefitted by the trust under the direction of the Governor and Council. RSA 11:1. In the case of the Benjamin Thompson Trust Fund, RSA 11:6 provides that the finance committee for investments established by RSA 187-A:17 shall manage investments of the fund and has the authority to buy and sell securities in the fund. The state treasurer is to be notified of all actions of the committee in that regard.



The respective rules of the treasurer and of the finance committee in the administration and management of the trust fund are vested in those state officers by statute and may not legally be delegated to another party without specific statutory authorization. However, short of a delegation of your legal custody of the fund, it is permissible for you to put administrative procedures in place to assist you in your custodial functions. Thus, your entering into a contract with a bank under which the bank would handle all necessary paperwork relating to transactions in securities in the fund would not, in our view, be prohibited by the above statutory provisions as an impermissible delegation of custody.

Although we do not have a specific form for such a contract, it should clearly contain descriptions of the precise administrative duties which the bank is intended to assume, the method by which the bank will process transactions in the funds, the form of regular and detailed reports or accountings to you as to all transactions, and the contract's duration and maximum fee. It must also require full indemnification of the State and its officials by the bank for any losses sustained. If you would like assistance in the drafting or review of such a contract, or have other questions, please let us know.

Very truly yours,



Betsy S. Westgate  
Assistant Attorney General  
Division of Legal Counsel

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